

REMARKS

Claim 1-18 are pending in the application. The Examiner rejected claims 1-3 and 14-17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,493,832 ("Itakura") in view of U.S. Patent No. 5,668,841 ("Haskell"). The Examiner rejected claims 5-12 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Itakura and Haskell in view of U.S. Patent No. 5,892,535 ("Allen"). Additionally, the Examiner rejected Claims 16-18 as being improperly numbered. Finally, the Examiner objected to claims 4, 9, 13 and 18 as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5, 8-9 and 16-18 have been amended. Applicants traverse the Examiner's objections for the following reasons.

I. Objection to Claims 16-18

The Examiner objected to claims 16-18 as being improperly numbered. Applicants have amended claims 16-18 to correct the numbering and request that the Examiner now withdraw this objection.

II. Rejection of Claims 1-3, 5-12 and 14-17 Based on Itakura

The Examiner rejected claims 1-3, 5-12 and 14-17 under 35 U.S.C. § 103(a) based on Itakura in view of one or more other references. These rejections are not proper, however, because Itakura does not have an early enough effective date to qualify as a § 102 reference and therefore also cannot be used as the basis for a proper § 103 rejection.

For a reference to serve as the basis for a proper § 103 rejection, that reference must have an early enough effective date to qualify as a reference under § 102. This application was filed on January 6, 2000, while Itakura issued (and was also first publicly disclosed) on December 10, 2002. Therefore, Itakura would not qualify as a reference under either § 102(a) or § 102(b). Further, this application is a CIP of U.S. Application Serial No. 09/226,169, filed January 7, 1999 (now U.S. Pat. No. 6,473,441), which in turn claims priority to U.S. Prov. Application Serial No. 60/112,866, filed December 18, 1998. Since the claims in this application are supported in at least the '441 patent, if not also in the provisional application, this application is entitled to the benefit of the January 7, 1999 filing date for determining the effective dates of references under § 102 and § 103. Therefore, Itakura's March 29, 1999 filing date would not be early enough to qualify it as a reference under § 102(e).

This support may be found in various portions of the '441 patent. For example, the Abstract of the '441 patent describes that the "bit rate of the each stream is detected from the stored [media] signals and a corresponding queue is set up in a network interface card for outputting data at the detected bit rate." Primary and secondary counters might be used for each stream, and "[a]s a result, the network interface is able to output isochronous signals with an average bit rate within one bit per second of desired bit rates and with a jitter of less than one millisecond." (Abstract of the '441 patent.)

Additionally, Figure 2 of this application is a block diagram of an exemplary digital media system that includes a video pump 12 for distributing media to set top devices 20 at the specific rate required for each stream. (pg. 8.) Figure 4 is a functional block diagram of the video pump 12 of Figure 2 that illustrates a real-time pump 34, a channel timing module 40, a

video pump control & status 32 and other components. These two figures in this application are found as Figures 1 and 2 respectively in the '441 patent, along with corresponding discussions of the figures. Further, Figure 6 in this application illustrates an exemplary channel timing module 40 that employs a two-stage clock, while Figure 7 depicts an exemplary timer FPGA 72 that might be used in the channel timing module 40 of Figure 6. These two figures are again found in the '441 patent as Figures 8 and 9 respectively, along with corresponding discussions of the two figures.

These previous examples are not meant to be exhaustive but are merely illustrative of the support found in the '441 patent for the matter claimed in this application. Therefore, this application is entitled to the benefit of the January 7, 1999 filing date of its parent, and the March 29, 1999 filing date of Itakura would not be early enough to qualify it as a reference under § 102 or § 103. As the other references cited by the Examiner do not teach or suggest all elements of Applicants' independent or dependent claims, Applicants respectfully submit that the Examiner has not made a prima facie case of obviousness and that this application is in condition for allowance.

III. Conclusion

In conclusion, Applicants submit that Itakura does not have an early enough effective date under § 102 to serve as the basis for a proper § 103 rejection, and the other references cited by the Examiner do not teach or suggest all the limitations of Applicants' independent or dependent claims. Therefore, Applicants submit that the application is in condition for allowance and respectfully request early notice to this effect. If any questions or issues remain, the Examiner is

invited to contact Applicants' attorney, Brian Harris, at his direct dial number (312) 913-3303.

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Respectfully submitted,

McDONNELL BOEHNEN
HULBERT & BERGHOFF

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By:

Brian R. Harris

Brian R. Harris
Reg. No. 45,900